

AMENDATORY SECTION (Amending WSR 93-24-047, filed 11/23/93, effective 12/24/93)

WAC 173-322-010 Purpose and authority. This chapter recognizes that the state contains hundreds of hazardous waste sites which threaten the state's water resources, including those used for public drinking water; that many of our municipal landfills are current or potential hazardous waste sites and present serious threats to human health and the environment; and that the costs of eliminating these threats in many cases are beyond the financial means of local governments and ratepayers.

This chapter establishes requirements for a program of grants and loans to local governments for remedial action pursuant to RCW 70.105D.070 (3)(a) and (7). ~~((The department may provide grants to local governments for remedial actions including site hazard assessments, site studies and remediations, and safe drinking water actions.))~~ The intent of the remedial action grants and loans is to encourage and expedite the cleanup of hazardous waste sites and to lessen the impact of the cleanup on ratepayers and taxpayers. The remedial action grants and loans shall be used to supplement local government funding and funding from other sources to carry out required remedial action.

AMENDATORY SECTION (Amending Order 97-09A, filed 2/12/01, effective 3/15/01)

WAC 173-322-020 Definitions. Unless otherwise defined in this chapter, words and phrases used in this chapter shall be defined according to WAC 173-340-200.

~~(("Act" means the "Model Toxics Control Act," chapter 70.105D RCW.~~

~~"Agreed order" means an order issued under WAC 173-340-530.))~~ "Abandoned or derelict vessels" means vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel.

"Area-wide ground water contamination" means multiple adjacent properties with different ownership affected by hazardous substances from multiple sources that have resulted in commingled plumes of contaminated ground water that are not

practicable to address separately.

"Cleanup action" means any remedial action, except interim actions, taken at a site to eliminate, render less toxic, stabilize, contain, immobilize, isolate, treat, destroy, or remove a hazardous substance that complies with ~~((cleanup standards, utilizes permanent solutions to the maximum extent practicable, and includes adequate monitoring to ensure the effectiveness of the cleanup action.~~

~~"Consent order" means an order issued under chapter 90.48 or 70.105B RCW))~~ WAC 173-340-350 through 173-340-390.


"Coordinated water system plan" means a plan for public water systems within a critical water supply service area which identifies the present and future water system concerns and sets forth a means for meeting those concerns in the most efficient manner possible pursuant to chapter 246-293 WAC.


"Decree" or "consent decree" means a consent decree issued under WAC 173-340-520 or the federal cleanup law. ~~(("Consent decree" is synonymous with decree.))~~

"Department" means the department of ecology.

~~(("Disposal" means a remedial action which removes hazardous substances from the site and places the hazardous substances in an engineered, regulatory complaint facility as a final destination.~~

~~"Enforcement order" means an order issued under WAC 173-340-540.))~~ "Economically disadvantaged county" means a county that meets the following criteria:

 The per capita income of the county, as measured by the latest official estimate of the Washington state office of financial management, is in the lower twenty counties in the state; and

 The county is economically distressed, as defined by chapter 43.165 RCW.

The department will include a list of counties which are economically disadvantaged in the following publication: Washington state department of ecology, "Remedial Action Program Guidelines," Publication No. 99-505.

"Federal cleanup law" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601 et seq.

"Grant agreement" means a binding agreement between the local government and the department that authorizes the ~~((transfer))~~ disbursement of funds to the local government to reimburse it for a portion of expenditures in support of a specified scope of services.

"Hazard ranking" means the ranking for hazardous waste sites used by the department pursuant to ~~((chapter 70.105D))~~ RCW 70.105D.030 (2)(b) and WAC 173-340-330.

"Hazardous substances" means any hazardous substance~~((s))~~

as defined in WAC 173-340-200.

"Hazardous waste site" means any facility where there has been confirmation of a release or threatened release of a hazardous substance that requires remedial action.

"Independent remedial actions" means remedial actions conducted without department oversight or approval and not under an order or consent decree.

"Initial containment of methamphetamine lab sites" means the first location where hazardous substances are confined by a container, vessel, barrier, or structure, whether natural or constructed, with a defined boundary, and that prevents or minimizes its release into the environment.

"Innovative technology" means new technologies that have been demonstrated to be technically feasible under certain site conditions, but have not been widely used under different site conditions. Innovative technology also means the innovative use of existing technologies that have been established for use under certain site conditions, but not the conditions that exist at the hazardous waste site for which a remedial action grant is sought. Innovative technology has limited performance and cost data available.

"Interim action" means a remedial action conducted under WAC 173-340-430 (~~((that partially addresses the cleanup of a site)).~~).

"Loan agreement" means a binding agreement between the local government and the department that authorizes the disbursement of funds to the local government that must be repaid. The loan agreement includes terms such as interest rates and repayment schedule, scope of work, performance schedule, and project budget.

"Local government" means any political subdivision, regional governmental unit, district, municipal or public corporation, including cities, towns, and counties. The term encompasses but does not refer specifically to the departments within a city, town, or county.

~~((("Minimum functional standards" means the requirements of chapters 173 304 and 173 351 WAC, the minimum functional standards for solid waste handling.))~~ "Methamphetamine lab site assessment" means the actions taken by a local health department or district under WAC 246-205-520 through 246-205-560, including posting the property, inspecting the property, determining whether the property is contaminated, posting contaminated property, and notifying occupants, property owners, and other persons with an interest in the contaminated property.

"Model Toxics Control Act" or "act" means chapter 70.105D RCW, first passed by the voters in the November 1988 general election as Initiative 97 and as since amended by the legislature.

"National Priorities List (~~((NPL))~~)" or "NPL" means a list

of hazardous waste sites at which the ((United States)) U.S. Environmental Protection Agency intends to proceed with enforcement or cleanup action.

"No further action (NFA) determination" means ((an)) a written opinion issued by the department under WAC 173-340-515 (5)(b) that the independent remedial actions performed at a hazardous waste site meet the substantive requirements of chapter 173-340 WAC and that no further remedial action is required at the hazardous waste site. The opinion is advisory only and not binding on the department.

"Order" means an order issued under chapter 70.105D RCW, including enforcement orders issued under WAC 173-340-540 and agreed orders issued under WAC 173-340-530, or an order issued under the federal cleanup law, including unilateral administrative orders (UAO) and administrative orders on consent (AOC).

"Oversight costs" are remedial action costs of the department or the ((United States)) U.S. Environmental Protection Agency reasonably attributable to the administration of an order or decree for remedial action at a hazardous waste site.

"Oversight remedial actions" means remedial actions conducted under an order or decree.

"Partial funding" means funding less than the maximum percentage of eligible costs allowed under this chapter.

"Pilot study" means an experiment in remedial action method, with the purpose of testing the suitability of a particular cleanup technology or process for remedial action at a particular site.

"Potentially liable person ((PLP))" or "PLP" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040.

"Potentially responsible party" or "PRP" means "covered persons" as defined under section 9607(a)(1) through (4) of the federal cleanup law (42 U.S.C. Sec. 9607(a)).

"Private right of action" means a legal claim authorized by RCW 70.105D.080 under which a person may recover costs of remedial action from other persons liable under the act.

"Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with such system.

"Purveyor" means an agency or subdivision of the state or a municipal corporation, firm, company, mutual or cooperative

association, institution, partnership, or person or any other entity that owns or operates a public water system, or the authorized agent of such entities.

"Recycling" means a remedial action which permanently removes hazardous substances from the site and successfully directs the material into a new product suitable for further industrial or consumer use.

"Remedial action" means any action or expenditure consistent with the purposes of chapter 70.105D RCW to identify, eliminate, or minimize any threat (~~((or potential threat))~~) posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

"Remedial design (RD)" means an engineering study during which technical plans and specifications are developed to guide subsequent cleanup action at a hazardous waste site.

"Remedial investigation/feasibility study (~~((RI/FS))~~)" or "RI/FS" means a (~~((study))~~) remedial action that consists of activities conducted under WAC 173-340-350 intended to collect, develop, and evaluate sufficient information regarding a site to enable the selection of a cleanup action under WAC 173-340-360 through 173-340-390.

"Retroactive costs" means costs incurred prior to the date of the grant agreement.

"Safe drinking water" means water meeting drinking water quality standards set by chapter 246-290 WAC.

"Safe drinking water action" means an action by a local government purveyor or other purveyor to provide safe drinking water through public water systems to areas contaminated by or threatened by contamination from hazardous waste sites.

"Site" means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft; or any site or area where a hazardous substance, other than a legal consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

"Site hazard assessment" means a remedial action that consists of an investigation performed under WAC 173-340-320.

~~((("Site study and remediation" means remedial investigation, feasibility study, pilot study, remedial design, interim action or cleanup action at hazardous waste sites.))~~

"Treatment" means a remedial action which permanently destroys, detoxifies, or recycles hazardous substances.

AMENDATORY SECTION (Amending Order 97-09A, filed 2/12/01, effective 3/15/01)

WAC 173-322-030 Relation to other legislation and administrative rules. (1) Nothing in this chapter shall influence, affect, or modify department programs, regulations, or enforcement of applicable laws relating to hazardous waste investigation and cleanup.

(2) Nothing in this chapter shall modify the ~~((legal settlements and))~~ order ~~((s))~~ or decree the department has secured with potentially liable persons for remedial action. The execution of remedies pursuant to ~~((court))~~ the order or decree shall in no way be contingent upon the availability of grant funding.

(3) All grants and loans shall be subject to existing accounting and auditing requirements of state laws and regulations applicable to the issuance of grants ~~((funds))~~ and loans.

AMENDATORY SECTION (Amending Order 97-09A, filed 2/12/01, effective 3/15/01)

WAC 173-322-040 ~~((Applicant eligibility.))~~ Administration. ~~((1))~~ All applicants must be local governments as defined in this chapter.

~~(2) Site study and remediation grants. Eligibility for site study and remediation grants is limited to applicants that meet the following standards:~~

~~(a) The applicant must be a local government that is a potentially liable person (PLP) at a hazardous waste site; or owns a site but is not a PLP; or applies for a remediation grant for area-wide ground water contamination. The local government may be the sole PLP, or there may be other PLPs at the site.~~

~~(b) The local government must meet one of the following standards:~~

~~(i) The department must have required the local government to perform some phase of remedial action, or have approved or reviewed a completed remedial action. That requirement, approval or review shall take one of the following forms:~~

~~(A) A consent decree under chapter 70.105D or 70.105B RCW requiring remedial action at the site; or~~

~~(B) An enforcement order or an agreed order under chapter 70.105D or 70.105B RCW prior to March 1, 1989, requiring remedial action at the site; or~~

~~(C) An enforcement order, consent order or consent decree under chapter 90.48 RCW requiring remedial action at the site or an amendment to such an order subsequent to March 1, 1989; or~~

~~(D) An underground storage tank (UST) compliance order; or~~

~~(E) A no further action (NFA) determination issued after completion of an independent remedial action.~~

~~(ii) The local government which is also a potentially responsible party under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) must have entered into a decree requiring remedial action at a hazardous waste site with the United States Environmental Protection Agency, provided that such agreement has been signed or acknowledged by the department in writing as a sufficient basis for remedial action grant funding.~~

~~(iii) The local government must have signed an agreement with the department requiring another PLP to perform remedial action at a landfill site and that agreement must take one of the forms specified in (b)(i) of this subsection. The local government must also have entered into an agreement with that PLP to reimburse the PLP for a portion of incurred remedial action costs with the sole purpose of providing relief to ratepayers and/or taxpayers from some remedial action costs.~~

~~(3) Safe drinking water action grants. Eligibility for safe drinking water action grants is limited to applicants who meet the following standards:~~

~~(a) The applicant must be a local government purveyor as defined in WAC 173-322-020 or be a local government applying on behalf of a purveyor.~~

~~(b) The subject water system must be in an area determined by the department of ecology to be a hazardous waste site or threatened by contamination from a hazardous waste site.~~

~~(c) The subject water system must exhibit levels of contamination which exceed the primary maximum contaminant levels (MCLs) set by WAC 246-290-310 or EPA standards as determined by the department of health, or exhibit levels of contamination which exceed the standards set by WAC 173-340-700 through 173-340-760 as determined by the department of ecology, or be certified by the state department of health that a contaminant threatens the safety and reliability of a public water system which cannot be remedied solely by operational solutions. Contaminants must include at least one hazardous substance. If the contaminant is a nitrate or a trihalomethane, it must be determined to have originated from a hazardous waste site.~~

~~(d) An order or decree must be issued to the identified~~

~~potentially liable persons requiring that safe drinking water be provided to the contaminated area as part of a remedial action. The department may waive this requirement if it has determined that no viable potentially liable persons exist, or if public health would be threatened from unreasonable delays associated with the search for potentially liable persons, or the order or decree process.~~

~~(e) If water line extensions are included in the proposed projects, such extensions must be consistent with the coordinated water system plan and growth management plan for the geographic area containing the affected water supplies.~~

~~(f) The applicant must be in substantial compliance, as determined by the department of health, with applicable rules of the Washington state board of health or the department of health, as contained in chapter 246-290 WAC (Public water supplies), chapter 246-292 WAC (Water works operator certification), chapter 246-293 WAC (Water System Coordination Act), and chapter 246-294 WAC (Drinking water operating permits).~~

~~(4) Site hazard assessment grants. The purpose of site hazard assessment grants is to involve local health districts and departments in assessing the degree of contamination at suspected hazardous waste sites according to WAC 173-340-320. While enabling local health districts or departments to participate in the scoring and ranking process, the department retains the authority to review and verify the results of a site hazard assessment and to establish the hazard ranking of the site. Eligibility for site hazard assessment grants is limited to applications that meet the following standards:~~

~~(a) The applicant must be a local health district or department.~~

~~(b) The scope of work for a site hazard assessment must conform to WAC 173-340-320 and prescribed guidelines issued by the department.~~

~~(c) The assessment must be for sites agreed to by the department.))~~ (1) Notice of availability. Local governments will be periodically informed of the availability of remedial action grant and loan funding.

(2) Application package. An application package will be sent to all parties expressing interest in remedial action grants or loans and to all local governments that have been required by decree or order to perform remedial actions. Application packages will include guidelines and application forms.

(3) Application guidance. The department will prepare a guidance manual on a biennial basis to assist grant and loan applicants and to facilitate compliance with this regulation.

(4) Application period. The application for a remedial action grant or loan must be submitted to the department within

the period specified in this chapter for the particular type of grant or loan.

(5) **Application form.** The application for a remedial action grant or loan must be completed on forms provided by the department.

(6) **Appropriation of funds.** Grants and loans will be awarded within the limits of available funds. The obligation of the department to make grant payments or provide loans is contingent upon the availability of funds through legislative appropriation and allotment, and such other conditions not reasonably foreseeable by the department rendering performance impossible. When the grant or loan crosses over bienniums, the obligation of the department is contingent upon the legislative appropriation of funds for the next biennium.

(7) **Allocation of funds.** In conjunction with the biennial program report and program plan required by WAC 173-340-340, the department will prepare an administrative allocation from the legislative appropriation of the local toxics control account for funding remedial action grants and loans. Within that administrative allocation, the department will allocate subamounts for each type of remedial action grant or loan. The allocations shall be based on estimated costs for work on eligible sites which are identified in the program plan for the biennium.

(8) **Funding.** Remedial action grants and loans shall be used to supplement local government funding and funding from other sources to carry out required remedial action.

(9) **Department discretion.** The department may fund all or portions of eligible grant or loan applications.

(10) **Indemnification.** To the extent that the Constitution and laws of the state of Washington permit, the grantee or loan recipient shall indemnify and hold the department harmless, from and against, any liability for any or all injuries to persons or property arising from the negligent act or omission of the grantee or loan recipient arising out of a grant or loan contract.

(11) **Administrative requirements.** All grants and loans administered by the department under this chapter shall comply with the requirements set forth in the following publication: Washington state department of ecology, "*Administrative Requirements for Ecology Grants and Loans*," Publication No. 91-18.

AMENDATORY SECTION (Amending Order 97-09A, filed 2/12/01, effective 3/15/01)

WAC 173-322-050 ((Project and cost eligibility.)) Fiscal controls. ((1) Costs for site study and remediation.

(a) Eligible costs include reasonable costs, including sales tax, incurred in performing:

(i) Remedial investigations;

(ii) Feasibility studies;

(iii) Remedial designs;

(iv) Pilot studies;

(v) Interim actions;

(vi) Landfill closures as required by chapters 173 304 and 173 351 WAC if included in the order or decree for remedial action;

(vii) Other remedial action included in the order or decree for remedial action, or included as part of the independent remedial action for which a no further action (NFA) determination is issued;

(viii) Capital costs of long-term monitoring systems; and

(ix) Operating and maintenance costs incurred during the first year of accomplishing the cleanup action after facilities and equipment have been installed or constructed.

(b) Ineligible costs:

(i) Retroactive costs except as limited by WAC 173-322-100;

(ii) Legal fees and penalties;

(iii) Oversight costs;

(iv) Operating and maintenance costs after the first year of accomplishing the remedial action;

(v) Operating and maintenance costs of long term monitoring; and

(vi) At sites other than landfills, additional ineligible costs will include costs incurred to meet departmental requirements for source control and prevention.

(2) Costs for safe drinking water actions.

(a) Eligible costs include reasonable costs, including sales tax, incurred for:

(i) Water supply source development and replacement, including pumping and storage facilities, source meters, and reasonable appurtenances;

(ii) Transmission lines between major system components, including inter ties with other water systems;

(iii) Treatment equipment and facilities;

(iv) Distribution lines from major system components to

~~system customers or service connections;~~

~~(v) Fire hydrants;~~

~~(vi) Service meters;~~

~~(vii) Project inspection, engineering, and administration;~~

~~(viii) Other costs identified by the state department of health as necessary to provide a system that operates in compliance with federal and state standards, or by the coordinated water system plan as necessary to meet required standards;~~

~~(ix) Other costs identified by the department of ecology as necessary to protect a public water system from contamination from a hazardous waste site or to determine the source of such contamination;~~

~~(x) Individual service connections, including any fees and charges, provided that property owners substantially participate in financing the cost of such connections;~~

~~(xi) Drinking water well abandonment for wells identified by the department as an environmental safety or health hazard according to WAC 173-160-415; and~~

~~(xii) Interim financing where necessary as a prerequisite to local government issuance of revenue bonds.~~

~~(b) Ineligible costs include:~~

~~(i) Legal fees and penalties;~~

~~(ii) Ecology oversight costs;~~

~~(iii) Operating and maintenance costs;~~

~~(iv) Retroactive costs except as limited by WAC 173-322-100;~~

~~(v) Natural resource damage assessment; and~~

~~(vi) Costs for source control or pollution prevention activities at sites other than landfills.~~

~~(3) Costs for site hazard assessments. Eligible costs include costs for activities performed pursuant to WAC 173-340-320 and enabling local health districts or departments to participate in the department's site ranking and priority setting process.~~

~~(4) Costs must be eligible under this section and must be approved by the department in order to be eligible for reimbursement.)) (1) **General.** The department will establish reasonable costs for all grants and loans, require applicants to manage projects in a cost-effective manner, and ensure that all potentially liable persons assume responsibility for remedial action.~~

~~(2) **Partial funding.** The department retains the authority to issue grants or loans which reimburse the recipient for less than the maximum percentage allowable under WAC 173-322-060 through 173-322-130.~~

~~(3) **Cap on-site funding.**~~

~~(a) For oversight remedial actions, after the remedial investigation and feasibility study have been completed and a~~

final remedial action plan has been developed by an eligible applicant, the department and the applicant will establish a final cleanup budget and negotiate grant and loan agreements. The funding provided under these agreements will be the final department remedial action fund commitment for cleanup at that hazardous waste site. Grant and loan agreements may be amended, but requests to increase the remedial action budget at that site will receive a lower priority than other applications.

(b) For independent remedial actions where a no further action (NFA) determination is issued after the cleanup has been completed, the grant amount shall not exceed two hundred thousand dollars per site.

(4) **Retroactive funding.** Retroactive costs are not eligible for funding, except as provided under this chapter for each type of grant or loan.

(5) **Reimbursement of grant funds.** If the department awards remedial action funds to a local government that successfully pursues a private right of action or a claim for insurance proceeds, then the department shall be reimbursed for a proportional share of the moneys received, after the local government's legal fees in pursuing such actions have been deducted.

(6) **Repayment of grant funds.** If the department provides the local government with an area-wide ground water remedial action grant for conducting remedial action on property owned by private parties, then the grant amount shall be partially repaid to the department. The terms and amount of repayment shall be included in the grant agreement between the local government and the department.

(7) **Financial reporting.** Where the department provides the local government with a remedial action grant or loan, the local government must submit a copy of its "Comprehensive Annual Financial Report" following its publication, for the year in which the grant is issued and for each year the grant is in effect.

(8) **Financial responsibility.** As established by the Model Toxics Control Act, chapter 70.105D RCW, and implementing regulations, the potentially liable persons (PLPs) bear financial responsibility for remedial action costs. The remedial action grant and loan programs may not be used to circumvent the responsibility of a PLP.

AMENDATORY SECTION (Amending Order 97-09A, filed 2/12/01, effective 3/15/01)

WAC 173-322-060 ~~((Application process.))~~ **Site hazard assessment grants.** ~~((1) Application period. The department shall determine appropriate application periods.~~

~~(2) Grant applications must:~~

~~(a) Include a commitment by the applicant for local funds to match grant funds according to the requirements of WAC 173-322-090.~~

~~(b) For site study and remediation projects include a scope of work which accomplishes the requirements of an order or decree.~~

~~(c) For safe drinking water action projects, include a scope of work necessary to provide safe drinking water to the area threatened or contaminated.~~

~~(d) For site hazard assessment projects, include a scope of work which conforms to the requirements of WAC 173-340-320(4).~~

~~(e) For independent remedial actions, include a description of the remedial action for which a no further action (NFA) determination was issued and include a copy of the NFA determination document.))~~

(1) **Purpose.** The purpose of the site hazard assessment grant program is to involve local health districts and departments in assessing the degree of contamination at suspected hazardous waste sites according to WAC 173-340-320. While enabling local health districts or departments to participate in the scoring and ranking process, the department retains the authority to review and verify the results of a site hazard assessment and to establish the hazard ranking of the site.

(2) **Applicant eligibility.** To be eligible for a site hazard assessment grant, the applicant must meet the following requirements:

(a) The applicant must be a local health district or department;

(b) The site must be located within the jurisdiction of the applicant;

(c) The department has agreed that the applicant may conduct the site hazard assessment; and

(d) The scope of work for the site hazard assessment must conform to WAC 173-340-320 and applicable department guidelines.

(3) **Application process.**

(a) **Submittal.** The application for a site hazard assessment grant may be submitted to the department at any time.

(b) **Content.** The grant application must be completed on forms provided by the department and include the following:

(i) Sufficient evidence to demonstrate compliance with the applicant eligibility requirements in subsection (2) of this section;

(ii) A description of the environmental benefits of the project;

(iii) A copy of the scope of work which conforms to the requirements of WAC 173-340-320 and applicable department guidelines;

(iv) A budget for the scope of work; and

(v) A description of all current or potential sources of funding, including other grants or loans.

(4) **Application evaluation and prioritization.**

(a) The grant application will be evaluated by the department for completeness and adequacy. After the application has been completed, the department and the applicant will negotiate the scope of work and budget for the grant. The department will consider cost eligibility and other sources of funding when negotiating the scope of work and budget for the grant.

(b) When pending grant applications or anticipated demand for site hazard assessment grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on the following:

(i) Potential public health or environmental threat from the sites;

(ii) Ownership of the sites. Publicly owned sites will receive priority over privately owned sites; and

(iii) Relative readiness of the applicant to proceed promptly to accomplish the scope of work.

(5) **Cost eligibility.** Costs must be eligible under this section and must be approved by the department in order to be eligible for reimbursement. Eligible costs include costs for activities performed pursuant to WAC 173-340-320 and enabling local health districts or departments to participate in the department's site ranking and priority-setting process.

(6) **Retroactive cost eligibility.** Retroactive costs are not eligible for reimbursement unless:

(a) The department unreasonably delays the processing of the grant application; or

(b) The department provided only partial funding under a prior grant agreement because funds were not available.

(7) **Funding.** The applicant shall be eligible to receive funding for up to one hundred percent of eligible project costs.

AMENDATORY SECTION (Amending Order 97-09A, filed 2/12/01, effective 3/15/01)

WAC 173-322-070 (~~(Application evaluation and prioritization.)~~) Oversight remedial action grants. (~~((1) When pending grant applications or anticipated demand for site study and remediation grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on the following:~~

~~(a) Relative hazard ranking as determined by the department in accordance with WAC 173-340-330 or the United States Environmental Protection Agency's National Priorities List ranking. Higher ranking sites will receive a higher funding priority.~~

~~(b) Evidence that the grant will expedite cleanup.~~

~~(c) Relative readiness of the applicant to proceed promptly to accomplish the scope of work.~~

~~(2) When pending grant applications or anticipated demand for safe drinking water action grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on the following:~~

~~(a) Relative risk to human health as jointly determined by the department of ecology, in accordance with WAC 173-340-330, and the department of health, in accordance with WAC 246-290-310. Sites with greater risk will receive higher funding priority.~~

~~(b) Relative readiness of the applicant to proceed promptly to accomplish the scope of work.~~

~~(c) Ownership of the water system to be extended or improved. Local government owned systems will receive higher funding priority than other systems.~~

~~(d) Number of people served by the water system and per capita cost of remediation.~~

~~(3) When pending grant applications or anticipated demand for site hazard assessment grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on the following:~~

~~(a) Potential public health or environmental threat from the sites.~~

~~(b) Ownership of the sites. Publicly owned sites will receive priority over privately owned sites.~~

~~(c) Relative readiness of the applicant to proceed promptly to accomplish the scope of work.))~~ **(1) Purpose.** The purpose of the oversight remedial action grant program is to provide

funding to local governments that conduct remedial actions under an order or decree. The grants are intended to encourage and expedite remedial action and to lessen the impact of the cost of such action on ratepayers and taxpayers.

(2) **Applicant eligibility.** Except as provided under subsection (3) of this section, to be eligible for an oversight remedial action grant, the applicant must meet the following requirements:

(a) The applicant must be a local government, as defined in WAC 173-322-020;

(b) The applicant must be a potentially liable person or a potentially responsible party at the hazardous waste site; and

(c) The applicant must meet one of the following criteria:

(i) The applicant is required by the department to conduct remedial action under an order or decree issued under chapter 70.105D RCW;

(ii) The applicant is required by the U.S. Environmental Protection Agency to conduct remedial action under an order or decree issued under the federal cleanup law and the order or decree has been signed or acknowledged in writing by the department as a sufficient basis for remedial action grant funding; or

(iii) The applicant has signed an order or decree issued under chapter 70.105D RCW requiring a potentially liable person (PLP) other than the applicant to conduct remedial action at a landfill site and the applicant has entered into an agreement with the PLP to reimburse the PLP for a portion of the remedial action costs incurred under the order or decree for the sole purpose of providing relief to ratepayers and/or taxpayers from remedial action costs.

(3) **Retroactive applicant eligibility.** To be eligible to receive an oversight remedial action grant for an order issued under the federal cleanup law prior to the effective date of the 2005 amendments to this chapter, the applicant must meet the following requirements:

(a) The applicant must be a local government, as defined in WAC 173-322-020;

(b) The applicant was required by the U.S. Environmental Protection Agency to conduct remedial action under an order issued under the federal cleanup law;

(c) The order has been signed or acknowledged in writing by the department as a sufficient basis for remedial action grant funding; and

(d) The applicant must submit to the department a grant application within six months after the effective date of the 2005 amendments to this chapter.

(4) **Application process.**

(a) **Submittal.** Except as provided under subsection (3) of this section, the application for an oversight remedial action

grant must be submitted to the department within sixty days of the effective date of the order or decree.

(b) **Content.** The grant application must be completed on forms provided by the department and include the following:

(i) Sufficient evidence to demonstrate compliance with the eligibility requirements in subsection (2) of this section;

(ii) A description of the history of the site, the current status of the site, and the remedial actions to be performed at the site under the order or decree;

(iii) A description of the environmental benefits of the project;

(iv) A copy of the order or decree;

(v) A copy of the scope of work which accomplishes the requirements of the order or decree;

(vi) A budget for the scope of work;

(vii) A description of all current or potential sources of funding including, but not limited to, other grants or loans, contributions from private right of action, and proceeds from insurance claims;

(viii) A commitment by the applicant to provide the required matching funds and a description of the sources of those funds; and

(ix) If the applicant claims the use of innovative technology under subsection (7)(c)(i) of this section, a justification for the claim.

(5) **Application evaluation and prioritization.**

(a) The grant application will be evaluated by the department for completeness and adequacy. After the application has been completed, the department and the applicant will negotiate the scope of work and budget for the grant. The department will consider cost eligibility and other sources of funding when negotiating the scope of work and budget for the grant.

(b) When pending grant applications or anticipated demand for oversight remedial action grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on the following:

(i) Relative hazard ranking as determined by the department in accordance with WAC 173-340-330 or the U.S. Environmental Protection Agency's National Priorities List ranking. Higher ranking sites will receive a higher funding priority;

(ii) Evidence that the grant will expedite cleanup;

(iii) Relative readiness of the applicant to proceed promptly to accomplish the scope of work.

(6) **Cost eligibility.** Costs must be eligible under this section and be approved by the department in order to be eligible for reimbursement.

(a) **Eligible costs.** Eligible costs for oversight remedial action grants include, but are not limited to, the reasonable

costs for the following:

(i) Remedial investigations;
(ii) Feasibility studies;
(iii) Remedial designs;
(iv) Pilot studies;
(v) Interim actions;
(vi) Cleanup actions;
(vii) Landfill closures required under chapters 173-304, 173-350 and 173-351 WAC, if also required as a remedial action under the order or decree;
(viii) Capital costs of long-term monitoring systems; and
(ix) Operating and maintenance costs incurred during the first year of accomplishing the cleanup action after facilities and equipment have been installed or constructed.

(b) **Ineligible costs.** Ineligible costs for oversight remedial action grants include, but are not limited to, the following:

(i) Retroactive costs, except as provided under subsection (7) of this section;

(ii) Oversight costs;

(iii) Operating and maintenance costs of long-term monitoring systems;

(iv) Operating and maintenance costs incurred after the first year of accomplishing the cleanup action;

(v) Natural resource damage assessment costs and natural resource damages;

(vi) Legal costs including, but not limited to, the cost of pursuing private right of action or insurance claims, the cost of administrative hearings, the cost of pursuing penalties or civil or criminal actions against persons, the cost of penalties incurred by the applicant, the cost of defending actions taken against the applicant, and attorney fees; and

(vii) In-kind services.

(7) **Retroactive cost eligibility.** Retroactive costs are not eligible for reimbursement unless:

(a) The department unreasonably delays the processing of the grant application;

(b) The department provided only partial funding under a prior grant agreement because funds were not available;

(c) The costs were incurred conducting independent remedial actions and those actions are incorporated as part of the order or decree; or

(d) The applicant is eligible under subsection (3) of this section.

(8) **Funding and reimbursement.**

(a) **Adjustment of eligible costs.** If an order or decree requires a potentially liable person (PLP) or a potentially responsible party (PRP) other than a local government to conduct remedial action, then the department shall deduct the financial

contribution of that PLP or PRP from the amount eligible for grant funding to the applicant. If the applicant has successfully pursued a private right of action for contribution or a claim for insurance proceeds, then the department shall deduct the moneys received from the amount eligible for grant funding to the applicant.

(b) **Funding of eligible costs.** Except as provided under (c) of this subsection, the applicant shall be eligible to receive funding for up to fifty percent of eligible project costs.

(c) **Additional funding.** The applicant shall be eligible to receive funding in excess of the limit set forth in (b) of this subsection under the following circumstances:

(i) **The applicant used innovative technology.** If the applicant utilizes innovative technology, as defined in WAC 173-322-020, as part of the cleanup action and the eligible project costs exceed four hundred thousand dollars, then the applicant shall be eligible to receive additional funding up to fifteen percent of eligible project costs. The applicant must include justification for the innovative technology claim in the grant application.

(ii) **The county is economically disadvantaged.** If the applicant is a county, or is located within a county, that is economically disadvantaged, as defined in WAC 173-322-020, then the applicant shall be eligible to receive additional funding up to twenty-five percent of eligible project costs.

(d) **Match requirement.** The applicant shall fund those eligible costs not funded by the department under the grant. The applicant may not use in-kind services or the department's share of the moneys identified under (e) of this subsection to meet the match requirement.

(e) **Reimbursement of grant funds.** If the applicant successfully pursues a private right of action for contribution or a claim for insurance proceeds, then the department shall be reimbursed for a proportional share of the moneys received, after the local government's legal fees in pursuing such actions have been deducted.

AMENDATORY SECTION (Amending WSR 93-24-047, filed 11/23/93, effective 12/24/93)

WAC 173-322-080 ((Allocation of grant funding.))
Independent remedial action grants. ((In conjunction with the biennial program report and program plan required by WAC 173-340 340, the department will prepare an administrative allocation from the legislative appropriation of the local toxics control account for funding remedial action grants. Within that administrative allocation, the department will allocate subamounts for site study and remediation grants, safe drinking water action grants, and site hazard assessment grants. The allocations shall be based on estimated costs for work on eligible sites which are identified in the program plan for the biennium.)) (1) **Purpose.** The purpose of the independent remedial action grant program is to provide funding to local governments that have successfully cleaned up hazardous waste sites through independent remedial action. Independent remedial actions are remedial actions that are voluntarily initiated and conducted without department oversight or approval. The grants are intended to encourage and expedite independent remedial action and to lessen the impact of the cost of such action on ratepayers and taxpayers.

(2) **Applicant eligibility.** To be eligible for an independent remedial action grant, the applicant must meet the following requirements:

(a) The applicant must be a local government, as defined in WAC 173-322-020;

(b) The applicant must be a potentially liable person or potentially responsible party at the hazardous waste site or have an ownership interest in the hazardous waste site;

(c) The applicant must have completed independent remedial actions at the hazardous waste site and received from the department a no further action (NFA) determination; and

(d) The eligible project costs are less than four hundred thousand dollars.

(3) **Application process.**

(a) **Submittal.** The application for an independent remedial action grant must be submitted to the department within sixty days of receipt of the no further action (NFA) determination.

(b) **Content.** The grant application must be completed on forms provided by the department and include the following:

(i) Sufficient evidence to demonstrate compliance with the eligibility requirements in subsection (2) of this section;

(ii) A description of the independent remedial action for which the department issued a no further action (NFA) determination;

(iii) A description of the environmental benefits of the project;

(iv) A copy of the independent remedial action report required under WAC 173-340-515(4);

(v) A copy of the document containing the no further action (NFA) determination;

(vi) A description of the costs incurred in performing the independent remedial actions;

(vii) A description of all current or potential sources of funding including, but not limited to, other grants or loans, contributions from private right of action, and proceeds from insurance claims; and

(viii) A commitment by the applicant to provide the required matching funds and a description of the sources of those funds.

(4) Application evaluation and prioritization.

(a) The grant application will be evaluated by the department for completeness and adequacy. After the application has been completed, the department and the applicant will negotiate the scope of work and budget for the grant. The department will consider cost eligibility and other sources of funding when negotiating the scope of work and budget for the grant.

(b) When pending grant applications or anticipated demand for independent remedial action grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on the date the department receives completed applications.

(5) Cost eligibility. Costs must be eligible under this section and be approved by the department in order to be eligible for reimbursement.

(a) Eligible costs. Eligible costs for independent remedial action grants include, but are not limited to, the reasonable costs for the following:

(i) Remedial investigations;

(ii) Feasibility studies;

(iii) Remedial designs;

(iv) Pilot studies;

(v) Interim actions;

(vi) Cleanup actions;

(vii) Capital costs of long-term monitoring systems;

(viii) Operating and maintenance costs incurred during the first year of accomplishing the cleanup action after facilities and equipment have been installed or constructed; and

(ix) Development of the independent remedial action report required under WAC 173-340-515(4).

(b) **Ineligible costs.** Ineligible costs for independent remedial action grants include, but are not limited to, the following:

(i) Retroactive costs, except as provided under subsection (6) of this section;

(ii) Cost of technical consultations provided by the department under WAC 173-340-515(5), including any deposit for such consultations;

(iii) Operating and maintenance costs of long-term monitoring systems;

(iv) Operating and maintenance costs incurred after the first year of accomplishing the cleanup action;

(v) Natural resource damage assessment costs and natural resource damages;

(vi) Legal costs including, but not limited to, the cost of pursuing private right of action or insurance claims, the cost of administrative hearings, the cost of pursuing penalties or civil or criminal actions against persons, the cost of penalties incurred by the applicant, the cost of defending actions taken against the applicant, and attorney fees; and

(vii) In-kind services.

(6) **Retroactive cost eligibility.** Retroactive costs are eligible for reimbursement if the costs were incurred within five years of the date of the grant application. Retroactive costs incurred more than five years before the date of the grant application are not eligible for reimbursement unless:

(a) The department unreasonably delayed the processing of the grant application; or

(b) The department provided only partial funding under a prior grant agreement because funds were not available.

(7) **Funding and reimbursement.**

(a) **Adjustment of eligible costs.** If the applicant has successfully pursued a private right of action for contribution or a claim for insurance proceeds, then the department shall deduct the moneys received from the amount eligible for grant funding to the applicant.

(b) **Funding of eligible costs.** Except as provided under (c) of this subsection, the applicant shall be eligible to receive funding for up to fifty percent of eligible project costs.

(c) **Additional funding.** If the applicant is a county, or is located within a county, that is economically disadvantaged, as defined in WAC 173-322-020, then the applicant shall be eligible to receive funding for up to seventy-five percent of eligible project costs.

(d) **Match requirement.** The applicant shall fund those eligible costs not funded by the department under the grant. The applicant may not use in-kind services or the department's share of the moneys identified under (e) of this subsection to

meet the match requirement.

(e) Reimbursement of grant funds. If the applicant successfully pursues a private right of action for contribution or a claim for insurance proceeds, then the department shall be reimbursed for a proportional share of the moneys received, after the local government's legal fees in pursuing such actions have been deducted.

AMENDATORY SECTION (Amending Order 97-09A, filed 2/12/01, effective 3/15/01)

~~WAC 173-322-090 ((State assistance share, local cash match, economic disadvantage, and role of potentially liable persons.))~~ Area-wide ground water remedial action grants. ~~((1) Except as otherwise provided in this section, costs eligible for site study and remediation and safe drinking water action grants will be considered for grant funding at up to fifty percent, except in the case of site study and remediation grants with eligible costs of over two hundred thousand dollars, local governments who utilize treatment, recycling and/or disposal as part or all of the cleanup action shall be eligible to receive an additional fifteen percent. Independent remedial action grant funds are available only for projects with eligible costs of less than two hundred thousand. The additional fifteen percent funds do not apply to independent remedial actions.~~

~~((2) Costs for site hazard assessments which are eligible under WAC 173-322-050(3) will be considered for grant funding of up to one hundred percent.~~

~~((3) Costs for area-wide ground water contamination remediation grants will be considered for grant funding of more than fifty percent. Local governments shall be required to obtain partial reimbursement from PLPs. Reasonable measures shall be taken by local governments to maximize reimbursement. The amount of grant funds and how much to pay back will be determined by the department on a case by case basis.~~

~~((4) Grant funding for economically disadvantaged local governments.~~

~~((a) In addition to grant funding under subsection (1) of this section, economically disadvantaged local governments may apply for up to twenty five percent supplemental funding. This additional funding will be contingent on satisfactory demonstration of extraordinary financial need.~~

~~((b) A local government is considered economically disadvantaged if it is a county, or a local government within a county, which meets both of the following criteria:~~

~~(i) Per capita income, as measured by the latest official estimate of the Washington state office of financial management, is in the lower twenty counties in the state; and~~

~~(ii) It is economically distressed as defined by chapter 43.165 RCW.~~

~~(c) The department will include a list of counties which are economically disadvantaged as defined herein in the guidelines for remedial action grants to be published on a biennial basis.~~

~~(5) For applicants eligible for site study and remediation grants, if a decree or order requires a potentially liable person (PLP) other than a local government to conduct remedial action, the financial contribution of that PLP will be deducted from the amount eligible for grant funding to the local government.~~

~~(6) For applicants eligible for safe drinking water action grants, funding from either the local government or the PLP may be used to match remedial action grant funds.~~

~~(7) As established by the Model Toxics Control Act, chapter 70.105D RCW, and implementing regulations, the potentially liable persons bear financial responsibility for remedial action costs. The remedial action grant program may not be used to circumvent the PLP responsibility.))~~ (1) **Purpose.** The purpose of the area-wide ground water remedial action grant program is to provide funding to local governments that facilitate the cleanup and redevelopment of property within their jurisdictions where the ground water has been contaminated by hazardous substances from multiple sources. The grants are intended to encourage and expedite the investigation and cleanup of area-wide ground water contamination.

(2) **Applicant eligibility.** To be eligible for an area-wide ground water remedial action grant, the applicant must meet the following requirements:

(a) The applicant must be a local government, as defined in WAC 173-322-020;

(b) The hazardous waste site must involve area-wide ground water contamination, as defined in WAC 173-322-020;

(c) The applicant must be a potentially liable person or a potentially responsible party at the hazardous waste site, have an ownership interest in the hazardous waste site, or apply on behalf of property owners affected by the hazardous waste site to facilitate area-wide ground water action;

(d) The area-wide ground water action must be required under an order or decree or be approved by the department. If the action is required under an order or decree issued under the federal cleanup law, then the order or decree must have been signed or acknowledged in writing by the department as a sufficient basis for remedial action grant funding;

(e) The applicant must agree to conduct or manage the area-

wide ground water action specified in the grant agreement; and

(f) The applicant must have entered into a reimbursement agreement with potentially liable persons, potentially responsible parties, and affected property owners to partially reimburse the applicant for the costs incurred implementing the area-wide ground water action specified in the grant agreement.

(3) Application process.

(a) Submittal. If the area-wide ground water remedial actions are required under an order or decree, then the grant application must be submitted to the department within sixty days of the effective date of the order or decree. If the area-wide ground water remedial actions are not required under an order or decree, then the grant application may be submitted to the department at any time.

(b) Content. The grant application must be completed on forms provided by the department and include the following:

(i) Sufficient evidence to demonstrate compliance with the eligibility requirements in subsection (2) of this section;

(ii) A description of the history of the site, the sources of the area-wide ground water contamination, the current status of the site, and the remedial actions to be performed at the site to address the area-wide ground water contamination;

(iii) A description of the environmental benefits of the project;

(iv) A copy of the order or decree, if applicable;

(v) A copy of the scope of work that specifies the remedial actions to be performed at the site to address the area-wide ground water contamination;

(vi) A budget for the scope of work;

(vii) A description of all current or potential sources of funding including, but not limited to, other grants or loans, contributions from private right of action, and proceeds from insurance claims;

(viii) A copy of the reimbursement agreement with affected property owners;

(ix) A commitment by the applicant to partially reimburse the department from funds obtained from affected property owners; and

(x) A commitment by the applicant to provide the required matching funds and a description of the sources of those funds.

(4) Application evaluation and prioritization.

(a) The grant application will be evaluated by the department for completeness and adequacy. After the application has been completed, the department and the applicant will negotiate the scope of work and budget for the grant. The department will consider cost eligibility and other sources of funding when negotiating the scope of work and budget for the grant.

(b) When pending grant applications or anticipated demand

for area-wide ground water remedial action grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on the following:

(i) Relative hazard ranking as determined by the department in accordance with WAC 173-340-330 or the U.S. Environmental Protection Agency's National Priorities List ranking. Higher ranking sites will receive a higher funding priority;

(ii) Evidence that the grant will expedite cleanup; and

(iii) Relative readiness of the applicant to proceed promptly to accomplish the scope of work.

(5) **Cost eligibility.** Costs must be eligible under this section and be approved by the department in order to be eligible for reimbursement.

(a) **Eligible costs.** Eligible costs for area-wide ground water remedial action grants include, but are not limited to, the reasonable costs for the following:

(i) Remedial investigations;

(ii) Feasibility studies;

(iii) Remedial designs;

(iv) Pilot studies;

(v) Interim actions;

(vi) Cleanup actions;

(vii) Capital costs of long-term monitoring systems; and

(viii) Operating and maintenance costs incurred during the first year of accomplishing the cleanup action after facilities and equipment have been installed or constructed.

(b) **Ineligible costs.** Ineligible costs for area-wide ground water remedial action grants include, but are not limited to, the following:

(i) Retroactive costs, except as provided under subsection (6) of this section;

(ii) Oversight costs;

(iii) Operating and maintenance costs of long-term monitoring systems;

(iv) Operating and maintenance costs incurred after the first year of accomplishing the cleanup action;

(v) Natural resource damage assessment costs and natural resource damages;

(vi) Legal costs including, but not limited to, the cost of pursuing private right of action or insurance claims, the cost of administrative hearings, the cost of pursuing penalties or civil or criminal actions against persons, the cost of penalties incurred by the applicant, the cost of defending actions taken against the applicant, and attorney fees; and

(vii) In-kind services.

(6) **Retroactive cost eligibility.** Retroactive costs are not eligible for reimbursement unless:

(a) The department unreasonably delays the processing of the grant application;

(b) The department provided only partial funding under a prior grant agreement because funds were not available; or

(c) The costs were incurred conducting independent remedial actions and those actions are incorporated as part of the order or decree.

(7) Funding and reimbursement.

(a) **Adjustment of eligible costs.** If an order or decree requires a potentially liable person (PLP) or a potentially responsible party (PRP) other than a local government to conduct remedial action, then the department shall deduct the financial contribution of that PLP or PRP from the amount eligible for grant funding to the applicant. If the applicant has successfully pursued a private right of action for contribution or a claim for insurance proceeds, then the department shall deduct the moneys received from the amount eligible for grant funding to the applicant.

(b) **Funding of eligible costs.** The applicant shall be eligible to receive funding for up to one hundred percent of eligible project costs.

(c) **Match requirement.** The applicant shall fund those eligible costs not funded by the department under the grant. The applicant may not use in-kind services or the department's share of the moneys identified under (d) of this subsection to meet the match requirement.

(d) **Reimbursement of grant funds.** If the applicant successfully pursues a private right of action for contribution or a claim for insurance proceeds, then the department shall be reimbursed for a proportional share of the moneys received, after the local government's legal fees in pursuing such actions have been deducted.

(e) **Repayment of grant funds.** If the property impacted by the area-wide ground water contamination is owned by private parties, then the grant amount shall be partially repaid to the department. The terms and amount of repayment shall be included in the grant agreement between the applicant and the department. The applicant shall obtain partial reimbursement from potentially liable persons and potentially responsible parties. Reasonable measures shall be taken by the applicant to maximize reimbursement.

AMENDATORY SECTION (Amending Order 97-09A, filed 2/12/01, effective 3/15/01)

WAC 173-322-100 ((Fiscal controls.)) Safe drinking water action grants. ((~~(1) The department will establish reasonable costs for all grants, require applicants to manage projects in a cost effective manner, and ensure that all potentially liable persons (PLPs) assume responsibility for remedial action.~~

~~(2) The department retains the authority to issue grants which reimburse the recipient for less than the maximum percentage allowable under WAC 173-322-090.~~

~~(3) Cap on site funding. Except for independent remedial actions where a no further action (NFA) determination is issued after cleanup has been completed, after the remedial investigation and feasibility study have been completed and a final remedial action plan has been developed by an eligible applicant, the department and the applicant will establish a final cleanup budget and negotiate a grant agreement. The grant amount in this agreement will be the final department remedial action grant fund commitment for cleanup at that hazardous waste site. Grant agreements may be amended, but requests to increase the remedial action grant budget at that site will receive a lower priority than other applications.~~

~~(4) Retroactive funding. Grant funding of costs already incurred prior to the date of the grant agreement may be allowed to local governments where the order or decree with the department, if any, postdates March 1, 1989, and under one or more of the following circumstances:~~

~~(a) If the grant application period is closed when the order or decree becomes effective;~~

~~(b) If the department unreasonably delays the processing of a remedial action grant application;~~

~~(c) If there are inadequate funds in the local toxics control account to cover the entire scope of work required by decree or order; and/or~~

~~(d) If remedial actions not required by decree or order have proceeded, grants for this work may be made if the department later formally includes such work items in a decree or order, or for independent remedial actions conducted no earlier than five years before the date of application if a no further action (NFA) determination is given for that independent remedial action.~~

~~(5) Reimbursement of grant funds. If the department awards remedial action funds to a local government that successfully~~

~~pursues a private right of action against a PLP who has not settled with the department or successfully pursues a claim for insurance proceeds, then the department shall be reimbursed for a proportional share of the moneys received, after the local government's legal fees in pursuing such actions have been deducted.~~

~~(6) Repayment of grant funds. Where the department provides a remediation grant for area-wide ground water contamination to a local government, the grant amount shall be partially repaid to the department where ownership of property affected by the grant is held by private parties. The terms and amount of repayment will be included in the grant agreement between the local government and the department.)~~ (1) Purpose. The purpose of the safe drinking water action grant program is to assist local governments, or a local government applying on behalf of a purveyor, in providing safe drinking water to areas contaminated by, or threatened by contamination from, hazardous waste sites.

(2) Applicant eligibility. To be eligible for a safe drinking water action grant, the applicant must meet the following requirements:

(a) The applicant must be a local government, as defined in WAC 173-322-020;

(b) The applicant must be a purveyor, as defined in WAC 173-322-020, or the applicant must be applying on behalf of a purveyor;

(c) The applicant must be in substantial compliance, as determined by the department of health, with applicable rules of the state board of health or the department of health, as contained in chapter 246-290 WAC (Public water supplies), chapter 246-292 WAC (Water works operator certification), chapter 246-293 WAC (Water System Coordination Act), and chapter 246-294 WAC (Drinking water operating permits);

(d) The public water system must be located in an area determined by the department to be a hazardous waste site or threatened by contamination from a hazardous waste site;

(e) The public water system must exhibit levels of contamination which exceed the primary maximum contaminant levels (MCLs) established by the state board of health and set forth in WAC 246-290-310, exhibit levels of contamination which exceed the cleanup standards established by the department of ecology under WAC 173-340-700 through 173-340-760, or be certified by the state department of health that a contaminant threatens the safety and reliability of a public water system which cannot be remedied solely by operational solutions. Contaminants must include at least one hazardous substance. If the contaminant is a nitrate or trihalomethane, it must be determined to have originated from a hazardous waste site;

(f) An order or decree must require safe drinking water

action. The department may waive this requirement if it has determined that no viable potentially liable person (PLP) exists or that public health would be threatened from unreasonable delays associated with the search for PLPs or the development of an order or decree. If the safe drinking water action is required under an order or decree issued under the federal cleanup law, then the order or decree must have been signed or acknowledged in writing by the department as a sufficient basis for remedial action grant funding; and

(g) If the safe drinking water action includes water line extensions, then the extensions must be consistent with the coordinated water system plan and growth management plan for the geographic area containing the affected water supplies.

(3) Application process.

(a) **Submittal.** If the safe drinking water actions are required under an order or decree, then the grant application must be submitted to the department within sixty days of the effective date of the order or decree. If the safe drinking water actions are not required under an order or decree, then the grant application may be submitted to the department at any time.

(b) **Content.** The grant application must be completed on forms provided by the department and include the following:

(i) Sufficient evidence to demonstrate compliance with the eligibility requirements in subsection (2) of this section;

(ii) A description of the history of the site, the current status of the site, the threat posed by the site to the public water system, and the remedial actions to be performed at the site to address that threat;

(iii) A description of the environmental benefits of the project;

(iv) A copy of the order or decree, if applicable;

(v) A copy of the scope of work that specifies the remedial actions to be performed at the site to address the threat to the public water system;

(vi) A budget for the scope of work;

(vii) A description of all current or potential sources of funding including, but not limited to, other grants or loans, contributions from private right of action, and proceeds from insurance claims; and

(viii) A commitment by the applicant to provide the required matching funds and a description of the sources of those funds.

(4) Application evaluation and prioritization.

(a) The grant application will be evaluated by the department for completeness and adequacy. After the application has been completed, the department and the applicant will negotiate the scope of work and budget for the grant. The department will consider cost eligibility and other sources of

funding when negotiating the scope of work and budget for the grant.

(b) When pending grant applications or anticipated demand for safe drinking water action grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on the following:

(i) Relative risk to human health as jointly determined by the department of ecology, in accordance with WAC 173-340-330, and the department of health, in accordance with WAC 246-290-310. Sites with greater risk will receive higher funding priority;

(ii) Relative readiness of the applicant to proceed promptly to accomplish the scope of work;

(iii) Ownership of the water system to be extended or improved. Local government-owned systems will receive higher funding priority than other systems; and

(iv) Number of people served by the water system and per capita cost of remediation.

(5) **Cost eligibility.** Costs must be eligible under this section and be approved by the department in order to be eligible for reimbursement.

(a) **Eligible costs.** Eligible costs for safe drinking water action grants include, but are not limited to, the reasonable costs for the following:

(i) Water supply source development and replacement, including pumping and storage facilities, source meters, and reasonable appurtenances;

(ii) Transmission lines between major system components, including inter-ties with other water systems;

(iii) Treatment equipment and facilities;

(iv) Distribution lines from major system components to system customers or service connections;

(v) Bottled water, as an interim action;

(vi) Fire hydrants;

(vii) Service meters;

(viii) Project inspection, engineering, and administration;

(ix) Individual service connections, including any fees and charges, provided that property owners substantially participate in financing the cost of such connections;

(x) Drinking water well abandonment for wells identified by the department as an environmental safety or health hazard according to WAC 173-160-415;

(xi) Interim financing where necessary as a prerequisite to local government issuance of revenue bonds;

(xii) Other costs identified by the department of health as necessary to provide a system that operates in compliance with federal and state standards, or by the coordinated water system plan as necessary to meet required standards; and

(xiii) Other costs identified by the department as

necessary to protect a public water system from contamination from a hazardous waste site or to determine the source of such contamination.

(b) **Ineligible costs.** Ineligible costs include, but are not limited to, the following:

(i) Retroactive costs, except as provided under subsection (6) of this section;

(ii) Oversight costs;

(iii) Operating and maintenance costs;

(iv) Natural resource damage assessment costs and natural resource damages;

(v) Legal costs including, but not limited to, the cost of pursuing private right of action or insurance claims, the cost of administrative hearings, the cost of pursuing penalties or civil or criminal actions against persons, the cost of penalties incurred by the applicant, the cost of defending actions taken against the applicant, and attorney fees; and

(vi) In-kind services.

(6) **Retroactive cost eligibility.** Retroactive costs are not eligible for reimbursement unless:

(a) The department unreasonably delays the processing of the grant application;

(b) The department provided only partial funding under a prior grant agreement because funds were not available; or

(c) The costs were incurred conducting independent remedial actions and those actions are incorporated as part of the order or decree.

(7) **Funding and reimbursement.**

(a) **Adjustment of eligible costs.** If an order or decree requires a potentially liable person (PLP) or a potentially responsible party (PRP) other than a local government to conduct remedial action, then the department shall deduct the financial contribution of that PLP or PRP from the amount eligible for grant funding to the applicant. If the applicant has successfully pursued a private right of action for contribution or a claim for insurance proceeds, then the department shall deduct the moneys received from the amount eligible for grant funding to the applicant.

(b) **Funding of eligible costs.** Except as provided under (c) of this subsection, the applicant shall be eligible to receive funding for up to fifty percent of eligible project costs.

(c) **Additional funding.** If the applicant is a county, or is located within a county, that is economically disadvantaged, as defined in WAC 173-322-020, then the applicant shall be eligible to receive funding for up to seventy-five percent of eligible project costs.

(d) **Match requirement.** The applicant shall fund those eligible costs not funded by the department under the grant.

The applicant may not use in-kind services or the department's share of the moneys identified under (e) of this subsection to meet the match requirement.

(e) Reimbursement of grant funds. If the applicant successfully pursues a private right of action for contribution or a claim for insurance proceeds, then the department shall be reimbursed for a proportional share of the moneys received, after the local government's legal fees in pursuing such actions have been deducted.

AMENDATORY SECTION (Amending Order 97-09A, filed 2/12/01, effective 3/15/01)

WAC 173-322-110 ((Grant administration.)) Methamphetamine lab site assessment and cleanup grants. ~~((1) Local governments will be periodically informed of the availability of remedial action grant funding.~~

~~(2) A grant application package will be sent to all parties expressing interest in remedial action grants and to all local governments that have been required by decree or order to perform remedial actions. Grant application packages will include grant guidelines and application forms.~~

~~(3) Application must be made within sixty days after the date that a decree or order becomes effective or for independent remedial actions, within sixty days of receipt of a no further action (NFA) determination.~~

~~(4) The department will prepare a guidance manual on a biennial basis to assist grant applicants and to facilitate compliance with this regulation.~~

~~(5) Appropriation and allocation of funds. Grants will be awarded within the limits of available funds. The obligation of the department to make grant payments is contingent upon the availability of funds through legislative appropriation and allotment, and such other conditions not reasonably foreseeable by the department rendering performance impossible. When the grant crosses over bienniums, the obligation of the department is contingent upon the legislative appropriation of funds for the next biennium.~~

~~(6) Remedial action grants shall be used to supplement local government funding and funding from other sources to carry out required remedial action.~~

~~(7) The department may fund all or portions of eligible grant applications.~~

~~(8) To the extent that the Constitution and laws of the state of Washington permit, the grantee shall indemnify and hold~~

~~the department harmless, from and against, any liability for any or all injuries to persons or property arising from the negligent act or omission of the grantee arising out of a grant contract.~~

~~(9) All grants under this chapter shall be consistent with "Administrative Requirements for Ecology Grants and Loans" WDOE publication No. 91-18, revised October 2000.))~~ (1) **Purpose.** The purpose of the methamphetamine lab site assessment and cleanup grant program is to provide funding to local health districts and departments that assess and cleanup sites of methamphetamine production. The program is not intended to assist local health districts and departments in the initial containment of methamphetamine lab sites.

(2) **Applicant eligibility.** To be eligible for a methamphetamine lab site assessment and cleanup grant, the applicant must meet the following requirements:

(a) The applicant must be a local health district or department;

(b) The methamphetamine lab site must be located within the jurisdiction of the applicant; and

(c) The scope of work for the assessment or cleanup of a methamphetamine lab site must conform to chapter 246-205 WAC and applicable board of health and department of health guidelines. The scope of work for the methamphetamine lab site assessment must also conform to WAC 173-340-320 and applicable department of ecology guidelines.

(3) **Application process.**

(a) Submittal. The application for a methamphetamine lab site assessment and cleanup grant may be submitted to the department at any time.

(b) Content. The grant application must be completed on forms provided by the department and include the following:

(i) Sufficient evidence to demonstrate compliance with the applicant eligibility requirements in subsection (2) of this section;

(ii) A description of the work completed under the prior grant agreement, if applicable;

(iii) A description of the anticipated work to be completed under the grant;

(iv) A budget for the anticipated work;

(v) A description of the environmental benefits of the project;

(vi) A description of all current or potential sources of funding including, but not limited to, other grants or loans, contributions from private right of action, and proceeds from insurance claims; and

(vii) A commitment by the applicant to provide the required matching funds and a description of the sources of those funds.

(4) Application evaluation and prioritization.

(a) The grant application will be evaluated by the department for completeness and adequacy. After the application has been completed, the department and the applicant will negotiate the scope of work and budget for the grant. The department will consider cost eligibility and other sources of funding when negotiating the scope of work and budget for the grant.

(b) When pending grant applications or anticipated demand for methamphetamine lab site assessment and cleanup grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on the following:

(i) Potential public health or environmental threat from the methamphetamine lab sites;

(ii) Ownership of the methamphetamine lab sites. Publicly owned sites will receive priority over privately owned sites; and

(iii) Relative readiness of the applicant to proceed promptly to accomplish the scope of work.

(5) **Cost eligibility.** Costs must be eligible under this section and be approved by the department in order to be eligible for reimbursement.

(a) **Eligible costs.** Eligible costs for methamphetamine lab site assessment and cleanup grants include, but are not limited to, the reasonable costs for the following:

(i) Posting the property, as defined in WAC 246-205-010 and required under WAC 246-205-520;

(ii) Inspecting the property and determining whether the property is contaminated, as required under WAC 246-205-530;

(iii) Posting contaminated property, as defined in WAC 246-205-010 and required under WAC 246-205-560;

(iv) Notifying occupants, property owners, and other persons with an interest in the contaminated property, as required under WAC 246-205-560;

(v) Cleaning up contaminated publicly owned property, as required under WAC 246-205-570, including performing a precleanup site assessment, developing and implementing the cleanup work plan, performing a post-cleanup site assessment, and developing a cleanup report. Eligible costs include the costs incurred by an authorized contractor and the cost of overseeing the work performed by the contractor;

(vi) Overseeing the cleanup of contaminated privately owned property, as required under WAC 246-205-570 and 246-205-580, including reviewing cleanup work plans and reports and inspecting the property during and subsequent to the cleanup;

(vii) Disposal of contaminated property, as defined in WAC 246-205-010, if the property is publicly owned;

(viii) Releasing the property for use, as required under WAC 246-205-580;

(ix) County fees related to deed notification; and
(x) Equipment and training, if approved by the department in advance.

(b) **Ineligible costs.** Ineligible costs for methamphetamine lab site assessment and cleanup grants include, but are not limited to, the following:

(i) Retroactive costs, except as provided under subsection (6) of this section;

(ii) Initial containment of methamphetamine lab sites, as defined in WAC 173-322-020;

(iii) Restricting access to privately owned property, except as required under chapter 246-205 WAC;

(iv) Cleaning up privately owned contaminated property;

(v) Disposal of contaminated property, as defined in WAC 246-205-010, if the property is privately owned;

(vi) Disposal of property that is not contaminated, as defined in WAC 246-205-010;

(vii) Natural resource damage assessment costs and natural resource damages;

(viii) Legal costs including, but not limited to, the cost of pursuing private right of action or insurance claims, the cost of administrative hearings, the cost of pursuing penalties or civil or criminal actions against persons, the cost of penalties incurred by the applicant, the cost of defending actions taken against the applicant, and attorney fees;

(ix) Education and outreach activities; and

(x) In-kind services.

(6) **Retroactive cost eligibility.** Retroactive costs are not eligible for reimbursement unless:

(a) The department unreasonably delays the processing of the grant application; or

(b) The department provided only partial funding under a prior grant agreement because funds were not available.

(7) **Funding and reimbursement.**

(a) **Adjustment of eligible costs.** If the applicant has successfully pursued a private right of action for contribution or a claim for insurance proceeds, then the department shall deduct the moneys received from the amount eligible for grant funding to the applicant.

(b) **Funding of eligible costs.** The applicant shall be eligible to receive funding for up to one hundred percent of eligible methamphetamine lab site assessment costs. Except as provided under (c) of this subsection, the applicant shall also be eligible to receive funding for up to fifty percent of eligible methamphetamine lab site cleanup costs.

(c) **Additional funding.** If the applicant is a county, or is located within a county, that is economically disadvantaged, as defined in WAC 173-322-020, then the applicant shall be eligible to receive funding for up to seventy-five percent of

eligible methamphetamine lab site cleanup costs.

(d) **Match requirement.** The applicant shall fund those eligible costs not funded by the department under the grant. The applicant may not use in-kind services or the department's share of the moneys identified under (e) of this subsection to meet the match requirement.

(e) **Reimbursement of grant funds.** If the applicant successfully pursues a private right of action for contribution or a claim for insurance proceeds, then the department shall be reimbursed for a proportional share of the moneys received, after the local government's legal fees in pursuing such actions have been deducted.

AMENDATORY SECTION (Amending Order 97-09A, filed 2/12/01, effective 3/15/01)

WAC 173-322-120 ((Loans.)) Derelict vessel remedial action grants. ((The department may award a loan or combination loan and grant to a grant applicant. Loan terms and the repayment provisions of a loan shall be established on a case-by-case basis under an agreement between the local government and the department.)) (1) **Purpose.** The purpose of the derelict vessel remedial action grant program is to provide funding to local governments that clean up and dispose of hazardous substances from abandoned or derelict vessels that pose a threat to human health or the environment.

(2) **Applicant eligibility.** To be eligible for a derelict vessel remedial action grant, the applicant must meet the following requirements:

(a) The applicant must be a local government, as defined in WAC 173-322-020;

(b) The vessel must be an abandoned or derelict vessel, as defined in WAC 173-322-020; and

(c) The applicant must be the owner of the abandoned or derelict vessel.

(3) **Application process.**

(a) **Submittal.** The application for a derelict vessel remedial action grant may be submitted to the department at any time.

(b) **Content.** The grant application must be completed on forms provided by the department and include the following:

(i) Sufficient evidence to demonstrate compliance with the applicant eligibility requirements in subsection (2) of this section;

(ii) A description of the vessel, the types and quantities

of hazardous substances located within the vessel, the threat posed by the vessel to human health and the environment, the remedial actions to be performed to address that threat, and the authority under which the remedial action will be performed;

(iii) A copy of the scope of work that specifies the remedial actions to be performed to address the threat;

(iv) A description of the environmental benefits of the project;

(v) A budget for the scope of work;

(vi) A description of all current or potential sources of funding including, but not limited to, other grants or loans, contributions from private right of action, and proceeds from insurance claims; and

(vii) A commitment by the applicant to provide the required matching funds and a description of the sources of those funds.

(4) Application evaluation and prioritization.

(a) The grant application will be evaluated by the department for completeness and adequacy. After the application has been completed, the department and the applicant will negotiate the scope of work and budget for the grant. The department will consider cost eligibility and other sources of funding when negotiating the scope of work and budget for the grant.

(b) When pending grant applications or anticipated demand for derelict vessel remedial action grants exceed the amount of funds available, the department may prioritize applications or limit grant awards based on the following:

(i) Relative risk to human health and the environment;

(ii) Evidence that the grant will expedite cleanup; and

(iii) Relative readiness of the applicant to proceed promptly to accomplish the scope of work.

(5) Cost eligibility. Costs must be eligible under this section and be approved by the department in order to be eligible for reimbursement.

(a) Eligible costs. Eligible costs for a derelict vessel remedial action grant include, but are not limited to, the reasonable costs for the following:

(i) Remedial investigation of the vessel, including sampling and analysis; and

(ii) Removal and disposal of hazardous substances and materials designated as dangerous wastes under chapter 173-303 WAC.

(b) Ineligible costs. Ineligible costs for a derelict vessel remedial action grant include, but are not limited to, the following:

(i) Retroactive costs, except as provided in subsection (6) of this section;

(ii) Administrative cost of taking ownership of the vessel;

(iii) Removal and disposal of materials that are hazardous

substances or designated as dangerous wastes under chapter 173-303 WAC;

(iv) Disposal of the vessel at a landfill, including transport of the vessel;

(v) Disposal of the vessel at sea;

(vi) Natural resource damage assessment costs and natural resource damages;

(vii) Legal costs including, but not limited to, the cost of pursuing private right of action or insurance claims, the cost of administrative hearings, the cost of pursuing penalties or civil or criminal actions against persons, the cost of penalties incurred by the applicant, the cost of defending actions taken against the applicant, and attorney fees; and

(viii) In-kind services.

(6) **Retroactive cost eligibility.** Retroactive costs are not eligible for reimbursement unless:

(a) The department unreasonably delays the processing of the grant application; or

(b) The department provided only partial funding under a prior grant agreement because funds were not available.

(7) **Funding and reimbursement.**

(a) **Adjustment of eligible costs.** If the applicant has successfully pursued a private right of action for contribution or a claim for insurance proceeds, then the department shall deduct the moneys received from the amount eligible for grant funding to the applicant.

(b) **Funding of eligible costs.** Except as provided under (c) of this subsection, the applicant shall be eligible to receive funding for up to fifty percent of eligible project costs, not to exceed twenty-five thousand dollars.

(c) **Additional funding.** If the applicant is a county, or is located within a county, that is economically disadvantaged, as defined in WAC 173-322-020, then the applicant shall be eligible to receive funding for up to seventy-five percent of eligible project costs, not to exceed twenty-five thousand dollars.

(d) **Match requirement.** The applicant shall fund those eligible costs not funded by the department under the grant. The applicant may not use in-kind services or the department's share of the moneys identified under (e) of this subsection to meet the match requirement.

(e) **Reimbursement of grant funds.** If the applicant successfully pursues a private right of action for contribution or a claim for insurance proceeds, then the department shall be reimbursed for a proportional share of the moneys received, after the local government's legal fees in pursuing such actions have been deducted.

NEW SECTION

WAC 173-322-130 Loans. (1) **Purpose.** This section establishes requirements for a program of remedial action loans to local governments under RCW 70.105D.070 (3)(a) and (7). The loan program shall be limited to providing loans to supplement local government funding and funding from other sources to meet the match requirements for oversight remedial action grants. The intent of the loan program is to encourage and expedite the cleanup of hazardous waste sites and to lessen the impact of the cleanup cost on ratepayers and taxpayers.

(2) **Applicant eligibility.** To be eligible for a loan, the applicant must meet the following requirements:

(a) The applicant must be a local government, as defined in WAC 173-322-020;

(b) The applicant must meet the eligibility requirements for an oversight remedial action grant set forth in WAC 173-322-070(2);

(c) The applicant must agree to undergo an independent third-party financial review to determine its financial need for the loan, ability to repay the loan, and inability to obtain funds from any other source. The financial review shall be conducted at the direction and cost of the department; and

(d) The hazardous waste site must present an immediate danger to human health and the environment.

(3) **Application process.**

(a) **Submittal.** The loan application must be submitted to the department at the same time as the associated oversight remedial action grant application.

(b) **Content.** The loan application must be completed on forms provided by the department and include the following:

(i) Sufficient evidence to demonstrate the applicant's financial need for the loan, ability to repay the loan, and inability to obtain matching funds from any other source;

(ii) Sufficient evidence that the hazardous waste site presents an immediate danger to human health and the environment; and

(iii) A copy of the applicant's most recent Comprehensive Annual Financial Report.

(4) **Application evaluation and prioritization.**

(a) The department will evaluate the loan application together with the associated oversight remedial action grant application. The grant and loan applications will be evaluated by the department for completeness and adequacy. After the

grant and loan applications have been completed, the department and the applicant will negotiate a scope of work and budget for the grant and loan. The department will consider cost eligibility and other sources of funding when negotiating the scope of work and budget for the grant and loan.

(b) The department will fund the loan from the same fund allocation used to fund the associated oversight remedial action grant. When the demand for funds allocated for oversight remedial action grants and loans exceeds the amount of funds available, the department will prioritize the associated grant and loan applications together using the criteria set forth in WAC 173-322-070(5).

(5) **Cost eligibility.** The eligible costs for the loan program shall be the same as the eligible costs for the oversight remedial action grant program set forth in WAC 173-322-070(6).

(6) **Retroactive cost eligibility.** The eligibility of retroactive costs for the loan program shall be the same as the eligibility of retroactive costs for the oversight remedial action grant program set forth in WAC 173-322-070(7).

(7) **Funding and repayment.**

(a) **General.** If the department provides the applicant an oversight remedial action grant and the grant is funded to the maximum extent allowed under WAC 173-322-070(8), then the department may also provide the applicant a loan to enable the applicant to meet the match requirement for the grant. The loan shall be used to supplement local government funding and funding from other sources to meet the match requirement.

(b) **Department funding of match requirement.** The department may provide a loan to the applicant for up to one hundred percent of the match requirement for the oversight remedial action grant.

(c) **Local government funding of match requirement.** The applicant shall fund those eligible costs not funded by the department under the grant or loan. The applicant may not use in-kind services or the department's share of the moneys identified under WAC 173-322-070 (8)(d) to meet the match requirement.

(d) **Repayment of loan.** The terms and conditions for repayment of the loan shall be based on the applicant's ability to repay the loan, as determined by an independent third-party financial review. The independent third-party financial review shall be conducted at the direction and cost of the department.